

GAO

Briefing Report to the Chairman,
Committee on Foreign Relations
U.S. Senate

September 2000

FOREIGN AFFAIRS

Status of U.S. Parental Child Abductions to Germany, Sweden, and Austria



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United States General Accounting Office
Washington, D.C. 20548

National Security and
International Affairs Division

B-285990

September 8, 2000

The Honorable Jesse Helms
Chairman, Committee on Foreign Relations
United States Senate

Dear Mr. Chairman:

The State Department estimates that about 1,000 children are abducted by one of their parents from the United States annually.¹ Pursuant to the *1980 Hague Convention on the Civil Aspects of International Child Abduction*,² left-behind parents³ can apply for the return of, or access to (that is, visitation), their children located in countries that are parties to the Convention with the foreign country's government through the Department of State. The Convention governs how these applications are handled and adjudicated in the foreign country where the child is located. A May 2000 congressional resolution⁴ cited several countries, including Germany, Sweden, and Austria, for not meeting their commitments under this Convention.

As agreed with your office and in response to your concerns involving German, Swedish, and Austrian handling of U.S. cases, we obtained information from State Department files to determine the status and outcome of cases initiated by parents left behind in the United States from January 1995 through May 15, 2000. We briefed your staff on the results of our work on August 29, 2000. This report summarizes the contents of the briefing. As you also requested, we plan to meet with your staff to discuss additional work on international parental child abduction issues.

¹International parental child abduction occurs when a parent removes a child from the United States or retains a child outside the United States, with the intent to obstruct the parental rights (including visitation rights) of the left-behind parent. 18 U.S.C. 1204. The actual number of cases may be greater because some parents never report the abductions to the State Department but instead pursue a remedy directly with foreign authorities.

²29 ILM 1501 (1980).

³Throughout this report, we refer to the left-behind parents. However, any person, institution, or other body may utilize the Convention.

⁴H.Con.Res. 293.

Results in Brief

From January 1995 through May 15, 2000, left-behind parents in the United States initiated 298 cases under the Hague Convention indicating that the child had been taken to, or retained in Germany, Sweden, and Austria by the other parent. The State Department closed 227 of these cases, and 71 cases remain open. In 97 of the closed cases (43 percent), the child was returned or the left-behind parent was granted visitation rights. Nearly 90 percent of both opened and closed cases involved abductions to, or retentions in, Germany. Table 1 summarizes the status and outcome of cases involving each country.

Table 1: U.S. Cases With Germany, Sweden, and Austria Under the Hague Convention Seeking Return of Parentally Abducted Children or Visitation, Opened From January 1995 Through May 15, 2000

Country	Type of case	Status of all cases			Outcome of closed cases		
		Opened	Unresolved	Closed	Child not returned or visitation denied	Child returned or visitation granted	Percentage of cases children were returned or visitation granted
Germany	Return	215	43	172	105	67	39
	Visitation	42	16	26	12 ^a	14	54
Sweden	Return	27	6	21	7	14	67
	Visitation	3	1	2	2	0	0
Austria	Return	9	3	6	4	2	33
	Visitation	2	2	0	0	0	--
Total		298	71	227	130	97	43

^aIncludes two cases in which the information in State's files did not indicate whether visitation had been granted.

Source: GAO analysis of State Department case files.

Various reasons were cited for the 130 closed cases in which the children have not been returned or visitation was not granted. In 49 cases, left-behind parents withdrew or did not actively pursue their applications. In 16 cases, children were not returned because German courts concluded that the left-behind parent did not possess custody rights or subsequently acquiesced to the removal. In 17 cases, children were not returned because German courts ruled that the child's mental or physical well-being would be at risk. Reasons for the other 48 cases, as well as other information on the cases for each country, are included in the briefing sections of this report.

Background

A left-behind parent who believes a child has been wrongfully removed from, or retained outside, the United States by the other parent can apply under the Hague Convention for either the return or visitation of the child.⁵ Each of the 60 countries that have agreed to the Convention is required to establish a lead agency (called a "central authority") to serve as a primary point of contact. The State Department's Office of Children's Issues, Bureau of Consular Affairs, is the central authority for the United States. The Office is responsible for assisting parents in filing an application under the Convention, contacting the central authority and other officials in the foreign country on behalf of left-behind parents, and providing information on the status of foreign judicial and administrative proceedings as well as advising on possible courses of action. In Germany and Austria, the central authority is located within the Ministry of Justice. In Sweden, the central authority is located within the Ministry of Foreign Affairs.

Upon receipt of an application by a left-behind parent, the Office of Children's Issues forwards the application and supporting documents to the appropriate central authority in the country in which the child is believed to be located. The central authority in the foreign country reviews the application to ensure that the case falls within the parameters of the Convention and that all necessary information has been included. In some cases, the central authority will deny the application if it contains information showing that the Hague Convention does not apply. Following acceptance of the application, a judicial review is conducted, and a case determination is made. If an application is denied, the left-behind parent can appeal the decision. The State Department considers a Hague case closed when (1) the child is returned to the United States or the left-behind parent can exercise visitation rights, (2) the left-behind parent has withdrawn the application either explicitly or implicitly by not maintaining contact with the State Department on the progress of the case and is unable to be contacted,⁶ (3) the left-behind parent has lost the case at all adjudicative levels or has lost the case at one level and decided not to appeal, or (4) a settlement was reached between the abducting and left-behind parents. Additional information on the Convention and its processes is included in appendix I.

⁵This is applicable only when the Hague Convention is in force between the United States and the other country.

⁶The State Department indicated that there is no standard as to when to close a case under these circumstances.

Germany, Sweden, and Austria, as party states to the Hague Convention, have agreed to follow the processes established by the Convention. However, each country has its own administrative and judicial processes for adjudicating the cases. Although the State Department can attempt to influence the processes followed and actions taken by Germany, Sweden, and Austria as well as other countries, judicial authorities in each respective country make the final case decisions.

Scope and Methodology

We reviewed files that State's Office of Children's Issues maintains on cases initiated by left-behind parents seeking the return or visitation of their children in Germany, Sweden, and Austria under the Hague Convention.⁷ We reviewed cases opened from January 1, 1995, through May 15, 2000. The State Department indicated that files for cases opened before 1995 might be unavailable or incomplete. We reviewed cases filed under the Hague Convention, including cases in which the foreign authorities subsequently determined that the Convention did not apply.

To determine the status, outcome, and other characteristics of cases, we reviewed information maintained in the case files that are State's official records. The files included administrative, judicial, and communicative information related to each case. In general, case files included (1) the application submitted by the left-behind parent to the foreign country's central authority; (2) State Department correspondence with counterpart central authorities and U.S. embassies; (3) correspondence with left-behind parents on case status; (4) judicial and other legal documents; and (5) other correspondence between left-behind parents, family, lawyers, and foreign entities involved in the case. However, not all files had the same types or extent of information, and, in some cases important documents, such as an application, were not included.

We identified key pieces of information for each case. For closed cases, we identified (1) when the application was submitted to the Office of Children's Issues, (2) when the application was forwarded to the central

⁷In addition to filing cases through the State Department under the Hague Convention, a left-behind parent has the option of filing cases directly with the central authority or the court system in the relevant foreign country. Because the State Department does not have data on these cases, we did not include these cases in our review. We also did not include in our review cases in which a left-behind parent requested State Department assistance (such as in locating and verifying the welfare of the child) that is outside the scope of the Hague Convention.

authority counterpart in the foreign country, (3) what type of application was submitted (that is, return or visitation), (4) when the case was closed, (5) how long the case was open—from the time the application was submitted to State until State closed the case, and (6) what was the case outcome and what factors were cited as having affected the outcome. For cases that remained open, we identified the status of the case and what factors were affecting resolution, such as appeals. We did not independently assess the rationale underlying decisions of foreign courts or administrative bodies. State's files contained limited information on the enforcement of relevant court orders; therefore, we did not attempt to determine whether decisions of foreign courts or administrative bodies were actually enforced.

Where multiple reasons were cited for denying left-behind parents' request for return or visitation of their child, we made a judgment based on documentation in the case file as to which was the primary reason. When information in the case file was not clear, we interviewed the U.S. caseworker and other State Department officials involved in the case to obtain clarification. We also reviewed data in the Office of Children's Issues' case-tracking system. However, where data on cases in the files and the tracking system differed, we relied on the case files. We did so because of data problems in State's system described in our March 2000 report.⁸ In two closed visitation cases, we could not determine whether visitation had been granted; therefore, in the absence of documentation that visitation had been granted, we assumed that it had not.

Our analysis adopted the State Department's practice of maintaining an individual case for each child, even when siblings were involved. However, we did not adopt State's practice of maintaining a single case when a left-behind parent sought both the return and visitation of the child. This situation could occur when the left-behind parent's request for return of the child was denied and the left-behind parent requested visitation rights. To simplify our analyses and to ensure that we captured information for these situations, we established two cases with separate records for the return and visitation requests. Consequently, our data on the number of cases may be slightly higher than State's data.

⁸ See *Foreign Affairs: Specific Action Plan Needed to Improve Responses to Parental Child Abductions* (GAO/NSIAD-00-10, Mar. 29, 2000).

We recorded the results of our analysis of State's files in a database. We subsequently performed independent checks to ensure that data for each case were accurate and that the judgment we made regarding the case outcome was supported by information in the case file.

We conducted our work from May through September 2000 in accordance with generally accepted government auditing standards.

Agency Comments and Our Response

The State Department provided written comments on a draft of this report (see app. II). State also provided technical comments that we incorporated as appropriate. In its written comments, State described a number of actions that it is taking to deal with the problem of international parental child abduction, such as increasing staffing in the Office of Children's Issues. Although State did not comment on its agreement with our report, it did comment on aspects of the report's scope and methodology.

State noted that our report would have been more useful if we had included information on cases filed by left-behind parents in Germany, Sweden, and Austria for return, or access to, children abducted to, or wrongfully retained in, the United States. Although such cases were not in our work scope, we agree that information on U.S. handling of cases filed by persons in other countries would provide a useful benchmark that may help State address Convention implementation problems with other countries. The State Department's Office of Children's Issues oversees handling of cases filed by left-behind parents from other countries and could develop this information.

The State Department noted that in cases where foreign courts ruled that the child had not been habitually resident in the United States or the left-behind parent did not have custody rights, the U.S. left-behind parents had not established that an abduction or wrongful retention had occurred under the Hague Convention. There were 22 such cases out of the 199 return cases closed by State; 17 involving Germany, 3 involving Sweden, and 2 involving Austria. State believed that including these cases in our calculations of the number of cases in which a child was not returned is misleading. Our report accurately shows the outcomes of cases that were filed under the Hague Convention, including the outcome of the 22 cases where U.S. left-behind parents did not establish that an abduction or retention had occurred under the Convention. We did not independently assess the rationale underlying rejections of applications. We modified the scope and methodology to clarify that our analysis included cases in which

an application was filed under the Hague Convention, regardless of whether it was subsequently determined by foreign authorities that the Convention did not apply.

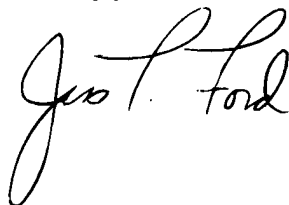
State indicated that it often forwards an application to a central authority in another country even if the application is incomplete (for example, when the application has not been translated into the language of the foreign country). State believed that our calculation of the duration of cases was not an accurate measurement of other countries' case processing time because the foreign country is not required to take action until it receives a complete application. We calculated case duration beginning with the day a left-behind parent submitted an application to the State Department. We chose this start time to measure the total number of days that a left-behind parent had to wait until the case was closed. Although actions on some cases were delayed because submitted applications were incomplete, foreign authority processing and decision-making accounted for most of the time taken to resolve most cases. We modified our scope and methodology to describe how we computed case duration.

State also indicated that its files have limited information on cases and do not indicate what may have occurred after cases were closed. It suggested that in some instances an abducting parent may agree to return a child or permit visitation without State being informed. As described in our scope and methodology, we based our review on information in State's files, and, therefore, events that are not documented in the files such as those occurring after a case was closed or without State's knowledge are not reflected in our report.

We are sending copies of this report to interested congressional committees. We are also sending copies to the Honorable Madeleine K. Albright, Secretary of State. We will also make copies available to others upon request.

Please contact me at (202) 512-4128 if you or your staff have any questions about this report. Additional GAO contact and staff acknowledgments are listed in appendix III.

Sincerely yours,

A handwritten signature in cursive script, reading "Jess T. Ford". The signature is written in black ink and is positioned below the "Sincerely yours," text.

Jess T. Ford, Associate Director
International Relations and Trade Issues

U.S. Parental Child Abduction Cases Involving Germany



From January 1995 through May 15, 2000,

215 return cases were opened

- 172 cases have been closed
 - 67 children returned and 105 not returned
- 43 cases remain open

42 visitation cases were opened

- 26 cases have been closed
 - 14 visitations granted and 12 visitations denied
- 16 cases remain open

Source: GAO analysis of State Department case files.

**Briefing Section I
U.S. Parental Child Abduction Cases
Involving Germany**

Left-behind parents filed 257 cases from January 1995 through May 15, 2000, through the State Department with the German central authority. Of these, 215 cases were filed in which the left-behind parent was seeking the return of the child to the United States. Of the 215 return cases, 172 have been closed, of which 67 resulted in the return of the child. In 105 cases, the child was not returned. Forty-three cases remain open.

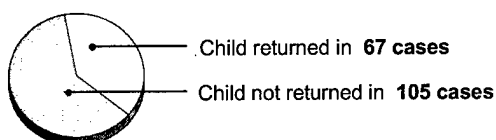
There were 42 cases in which the left-behind parent was seeking visitation. Twenty-six of these cases have been closed, of which visitation was granted in 14 cases. In 12 cases, visitation was denied. There are 16 cases that remain open.

For the 5-year period ending 1999, left-behind parents have filed an average of 47 cases annually with the State Department for the return or visitation of a child in Germany.

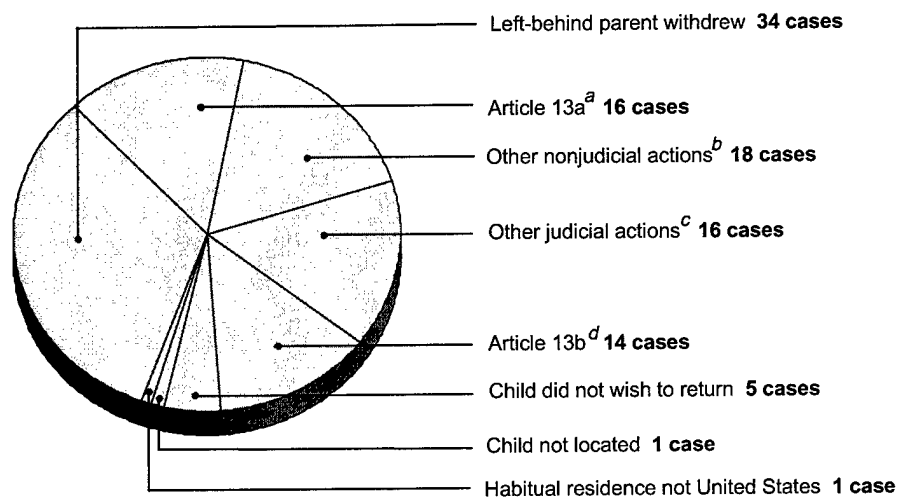
Briefing Section I
U.S. Parental Child Abduction Cases
Involving Germany



Outcome in 172 closed cases



Reasons 105 children not returned



^aArticle 13a allows a Hague Convention party state to refuse to return the child if the left-behind parent did not have custody at the time of removal, or subsequently acquiesced to the removal or retention.

^bNonjudicial actions include determinations by the central authority that Hague conditions had not been met or that a settlement was reached between the parents.

^cJudicial actions include determinations by legal authorities that the application for return was filed more than a year after the abduction occurred or that the left-behind parent did not have custody rights.

^dArticle 13b allows a Hague Convention party state to refuse to return the child if the return would pose a grave risk to the child's mental or physical well-being.

Source: GAO analysis of State Department case files.

**Briefing Section I
U.S. Parental Child Abduction Cases
Involving Germany**

Of the 172 closed return cases involving Germany, 67, or 39 percent, have resulted in a return of the child. In the remaining 105 cases, the child was not returned. In 34 of the 105 cases in which a child was not returned, the case was closed due to parental withdrawal of the application. Withdrawal of the application was characterized by (1) failure to pay the cost of litigation; (2) failure to maintain communication with or provide information to the German central authority to allow the case to proceed; or (3) a decision to pursue other options, such as private settlements, with the abducting parent. In some cases, the State Department closed the file because the left-behind parent ceased contact with the Department despite efforts by State to contact the parent.

German courts denied return in 16 cases based on a provision of the Convention, provided for in article 13a, which permits a court not to order return when it is established that the left-behind parent was not actually exercising custody rights at the time the abduction or retention took place (thus removal or retention was not wrongful as defined by the Convention), or had consented to or subsequently accepted the removal or retention. In 14 other cases, German courts relied on the exception in article 13b in denying the return of the children. Article 13b permits denial of a return request if return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

In another 16 cases, the denial of return occurred because of other judicial actions. These include four cases in which article 12 was cited in the denial of return—article 12 of the Convention allows denial in cases in which the application for return was filed more than a year after the abduction occurred and the child is settled in his or her new environment and five cases in which the court ruled that the left-behind parent did not have custody rights. In seven cases, State's files indicated that the return was denied by judicial actions but did not have evidence of the specific reasons for the action. In two of these cases, return was denied but a German court mediated a settlement for visitation rights.

In 18 cases, the child was not returned because of nonjudicial actions or circumstances. Of these cases, the central authority denied 13 applications on the grounds that information contained within the application demonstrated that Hague qualifications had not been met. In some of these cases, the applications stated that the left-behind parent did not have custody rights of the child at the time of abduction, which is a requisite to establish that a wrongful removal or retention, as provided in article 3, has occurred. In two cases, a settlement was reached between the parents. In

**Briefing Section I
U.S. Parental Child Abduction Cases
Involving Germany**

the remaining three cases, the left-behind parent did not submit all required documents to either the German central authority or the State Department.

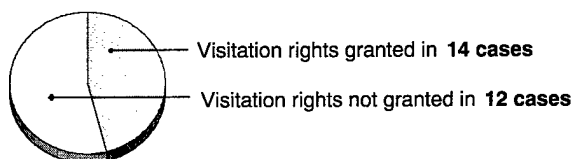
In 5 of the 105 cases, the child did not wish to return and was considered by Germany to be old enough and mature enough to make the decision. In one of these cases, the courts allowed a 9-year old child to exercise this right.

In one case, the German court ordered the child returned, but the child could not be located. The abducting parent allegedly removed the child to another country. In the remaining case, a German court denied return, citing that the child's habitual residence was not the United States.

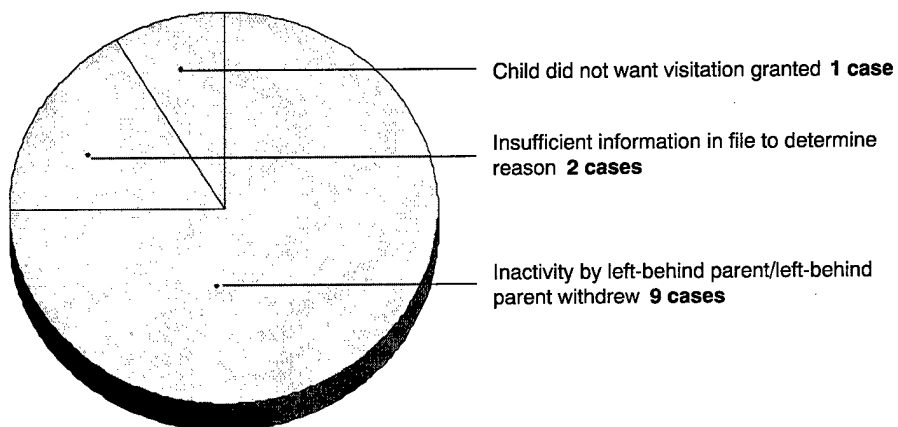
Briefing Section I
U.S. Parental Child Abduction Cases
Involving Germany



Outcome in 26 closed visitation cases



Reasons visitation rights not granted with 12 children



Source: GAO analysis of State Department case files.

**Briefing Section I
U.S. Parental Child Abduction Cases
Involving Germany**

Twenty-six visitation cases were closed involving Germany, of which 14 resulted in visitation being granted to the left-behind parent. In the remaining 12 cases, visitation was not granted. Of these cases, visitation was not granted in nine cases either because of inactivity by the left-behind parent or withdrawal of the application by the left-behind parent. In two other cases, State's files had insufficient information to determine why visitation was not granted. In the remaining case, the court did not grant visitation, citing that the child did not want to be visited by the left-behind parent.



Reasons 43 return cases remain open

- Left-behind parent
 - providing additional documents
 - awaiting first judicial review
 - appealing court decision
 - deciding on actions to take

Reasons 16 visitation cases remain open

- Left-behind parent
 - awaiting first judicial review
 - litigating enforcement of visitation rights that court granted
 - negotiating terms of visitation rights
 - completing financial aid forms

Source: GAO analysis of State Department case files.

**Briefing Section I
U.S. Parental Child Abduction Cases
Involving Germany**

Twenty of the 43 open return cases were opened in 1999 or 2000, and the left-behind parents are still in the process of submitting necessary documents or are awaiting the first court date. In the remaining 23 open return cases, which were opened before 1999, the left-behind parent (1) has been asked to provide additional information such as whether custody rights have been established in the United States, (2) is appealing or is responding to appeals made by the abducting parent, or (3) has not notified State or the German central authority on their next course of action (to pursue or close the case).

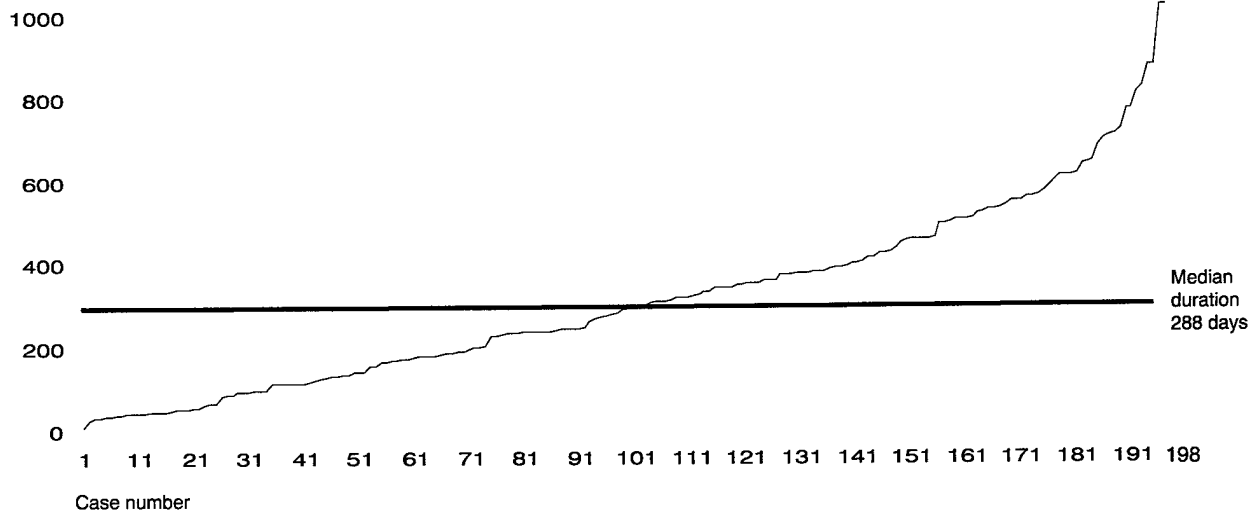
In 3 of the 16 open visitation cases, the left-behind parent is waiting for the first German court hearing. In the remaining 13 cases, the left-behind parent is either (1) litigating enforcement of visitation rights, (2) negotiating the terms of visitation rights with the abducting parent, or (3) preparing financial aid forms to cover the legal costs of adjudicating the visitation rights.

Briefing Section I
U.S. Parental Child Abduction Cases
Involving Germany



Germany

1200 Number of days case was open



Note: Data include closed return and visitation cases that were opened from January 1995 through May 15, 2000. Each case number represents an individual case.

Source: GAO analysis of State Department case files.

**Briefing Section I
U.S. Parental Child Abduction Cases
Involving Germany**

In the 198 closed cases involving Germany, the duration of the cases ranged from 4 to 1,019 days, with the median duration being 288 days. A primary reason for the lengthy duration of some cases is the appeal process. A left-behind parent may go through numerous appeals in an attempt to secure the return of a child, but the abducting parent can also appeal decisions. For example, two return cases that lasted 1,019 days each had several appeals. However, there are other reasons why cases take so long to resolve. For example, in a 704-day case, the German court ordered the child returned, but the abducting parent subsequently removed the child to a third country to avoid enforcement of the return order. The abducting parent and child have not been located.



- State Department raises concern about case duration but does not cite Germany for pattern noncompliance (May 1999)
- State Department raises concern regarding inconsistent implementation of the convention (October 1999)
- President Clinton discusses high-profile case with German Chancellor Schroeder (May 2000)
- United States and Germany create working group (June 2000)

In a May 1999 report to Congress,¹ the State Department raised concerns about the length of time Germany takes to adjudicate cases. Although the Department cited five countries in this report for demonstrating a pattern of noncompliance with obligations under the Convention,² it did not cite

¹*Report on Compliance with the Hague Convention on the Civil Aspects of International Child Abduction* (Washington, D.C.: Department of State, May 1999).

²The five countries are Austria, Honduras, Mauritius, Mexico, and Sweden.

**Briefing Section I
U.S. Parental Child Abduction Cases
Involving Germany**

Germany for pattern noncompliance. In October 1999, a State official testified about State's concerns with German courts' inconsistent application of the Convention.³

In July 1999, Germany reduced the number of courts that could hear cases filed under the Convention from 600 to 24. State Department officials believe that the consolidation may improve Germany's handling of Convention cases because (1) it may be easier to educate a smaller number of courts about Germany's obligations under the Convention, (2) each of the 24 courts will hear more Convention cases and should develop practical expertise in handling them, and (3) the consolidation may limit the possibility of local bias in the adjudication of cases.

In May 2000, according to State Department officials, President Clinton and German Chancellor Schroeder discussed a high-profile case involving a left-behind parent whose children were placed in foster care in Germany by the abducting parent and remain with foster parents. The left-behind parent was not informed of the children's placement. In 1995, the German courts denied return to the father by invoking article 13b of the Convention, ruling that return may risk psychological harm to the children. At the time of the abduction, the children were less than 5 years old and living with both parents. In July 2000, German authorities announced their willingness to facilitate visitation between the left-behind parent and his children. However, it is not clear when this visit may take place or whether this process may lead to the childrens' return.

In June 2000, State Department and German Ministry of Justice officials created a bilateral working group to address problems with cases filed under the Convention. The working group met in July 2000 to begin discussing actions that could be taken to improve the processing of cases. The group has scheduled another meeting on September 25, 2000, in Berlin, Germany. State Department officials told us that the agenda for this next meeting would include discussion of Germany's interpretation of exceptions under the Convention as well as enforcement of German court decisions.

³Statement of the Assistant Secretary for Consular Affairs, Department of State, before the Committee on International Relations, U.S. House of Representatives, October 14, 1999.

U.S. Parental Child Abduction Cases Involving Sweden



From January 1995 through May 15, 2000,

27 return cases were opened

- 14 children returned and 7 not returned
- 6 cases remain open

3 visitation cases were opened

- 2 cases have been closed
- visitation not granted
- 1 case remains open

Source: GAO analysis of State Department case files.

**Briefing Section II
U.S. Parental Child Abduction Cases
Involving Sweden**

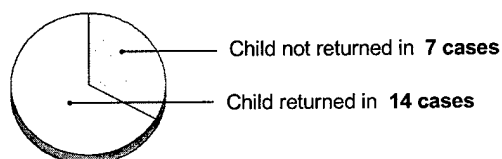
Between January 1995 and May 15, 2000, left-behind parents filed 30 Hague applications with the State Department's Office of Children's Issues seeking return of, or access to, children abducted to or retained in Sweden. Of these cases, the left-behind parent pursued the return of a child to the United States in 27 cases. Of the 27 cases seeking return of a child from Sweden, 21 have been closed. Of the 21 closed cases, the child was returned in 14 cases but was not in 7 cases. Six cases remain open.

There were only three cases in which left-behind parents sought visitation rights. Of these, two have been closed without visitation being granted. One case remains open.

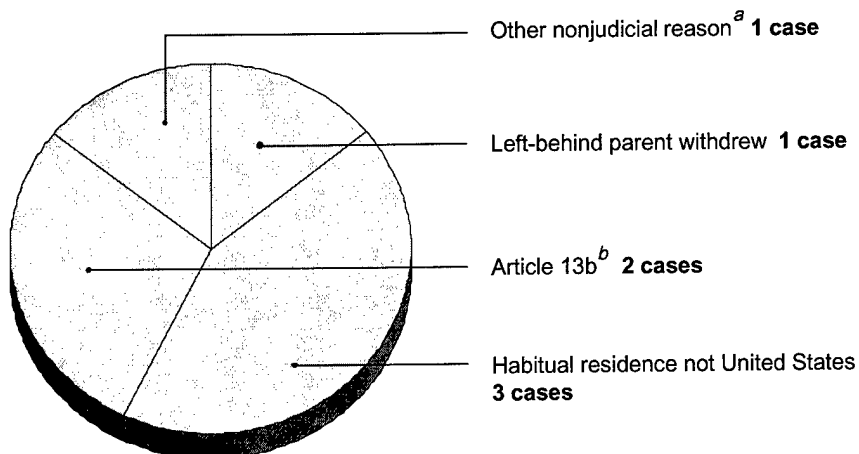
Briefing Section II
U.S. Parental Child Abduction Cases
Involving Sweden



Outcome in 21 closed cases



Reasons seven children not returned



^aSettlement was reached between the two parents.

^bArticle 13b allows a Hague Convention party state to refuse to return the child if return would expose the child to a grave risk of physical or psychological harm.

Source: GAO analysis of State Department case files.

**Briefing Section II
U.S. Parental Child Abduction Cases
Involving Sweden**

Swedish courts ruled in three of the seven closed cases in which the child was not returned that the child's habitual residence was not the United States. In two cases, Swedish courts denied return based on an exception in the Convention (article 13b) that allows denial of a return request if there is a grave risk that return would expose the child to psychological or physical harm. In one case, a left-behind parent withdrew the application because the parents had informally reached an agreement. In the remaining case, the State Department's file indicated that a mediated settlement had been reached between the two parties.

In the two closed cases where the left-behind parent sought visitation of the child, visitation was not granted. In one case, the left-behind parent withdrew the visitation application, and in the other case, State's files had insufficient information to determine why visitation was not granted.



Reasons six return cases remain open

- Left-behind parent
 - appealing court decision in four cases
 - awaiting first judicial review in one case
 - providing additional information in one case

Reason one visitation case remains open

- Left-behind parent is still litigating the terms of visitation

Source: GAO analysis of State Department case files.

**Briefing Section II
U.S. Parental Child Abduction Cases
Involving Sweden**

In four of the six return cases that remain open, the left-behind parent is appealing a court decision. In each of these four cases, the Swedish court of first instance denied the request for return of the child. In the fifth case, the left-behind parent is awaiting the first court hearing on the case. In the remaining case, the Swedish central authority has requested additional information from the left-behind parent before the case can be forwarded to the court for adjudication.

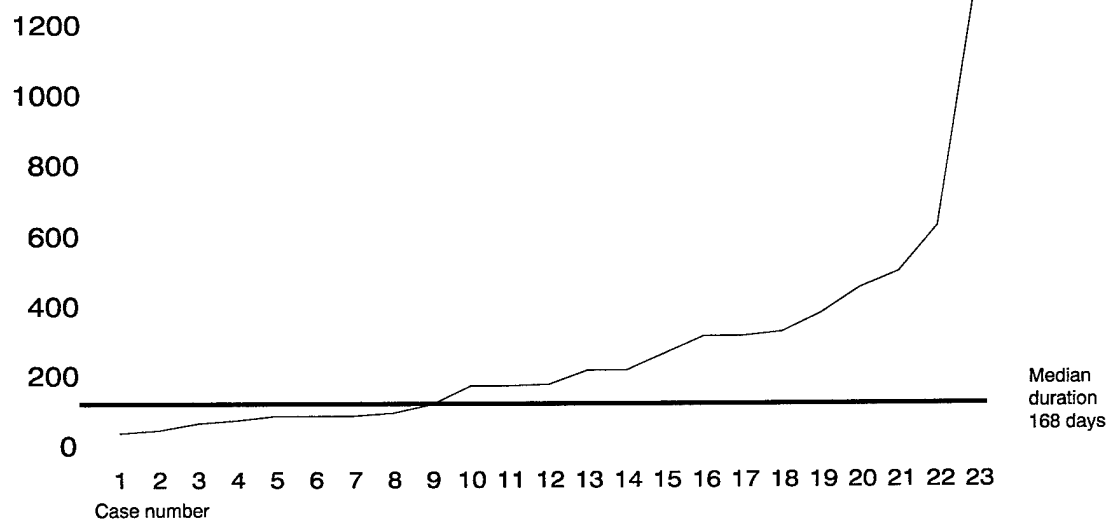
In the visitation case that remains open, the court has awarded visitation rights to the left-behind parent, but the terms and the enforcement of the court ruling are still being litigated. The left-behind parent is attempting to ensure that visitation rights granted by the court will be enforced. This case is the second action regarding the same child. In the first action, the left-behind parent unsuccessfully sought the return of the child to the United States.

Briefing Section II
U.S. Parental Child Abduction Cases
Involving Sweden



Sweden

1400 Number of days case was open



Note: Data include closed return and visitation cases that were opened from January 1995 through May 15, 2000. Each case number represents an individual case.

Source: GAO analysis of State Department case files.

**Briefing Section II
U.S. Parental Child Abduction Cases
Involving Sweden**

For the 23 closed cases with Sweden, the duration ranged from 28 to 1,329 days, with the median duration being 168 days. One reason for the lengthy duration of some cases was Sweden's difficulty in locating a child. For example, in a case that lasted 1,329 days, the abducting parent evaded Swedish authorities on several occasions and was eventually located along with the child in another country, where the abducting parent was arrested. The child was subsequently returned to the United States in June 2000. In another case that lasted 619 days, the left-behind parent was granted a return order, but the Swedish authorities could not locate the abducting parent and child for over a year. The child eventually was located and returned to the United States in May 2000.

Another reason for lengthy durations for some cases is the time-consuming appeal process. For example, in a case lasting 490 days, the left-behind parent was initially granted return of the child. The abducting parent, however, won an appeal in Sweden's Supreme Court which, notwithstanding that the Convention applies to any child who was habitually resident in a party state immediately before removal,¹ denied return on the grounds that the child was a habitual resident of Sweden. The court found that the child's habitual residence had become Sweden during the child's 2-year stay with the abducting parent. The left-behind parent has opened a case seeking visitation with the child.

¹Hague Convention, article 4.

Briefing Section II
U.S. Parental Child Abduction Cases
Involving Sweden



- State Department delivers two diplomatic notes (June 1996 and July 1998)
 - State Department cites Sweden for pattern noncompliance (May 1999)
-

Briefing Section II
U.S. Parental Child Abduction Cases
Involving Sweden

Although the number of cases filed involving Sweden is relatively small—about six annually for the 5-year period ending 1999—the United States has raised concerns about the country's fulfillment of its obligations under the Convention. In a May 1999 report to Congress, State said that Sweden was not in compliance with its obligations under the Convention.² Two return cases illustrate why. In a case filed in October 1996, the left-behind parent sought to have his child returned to the United States, and the Swedish court ordered the return. The abducting parent absconded with the child, and Swedish authorities were unable to locate the child until June 2000, at which time the child was returned to the United States.³ The State Department believed that Sweden was not fulfilling its obligations in this case to locate "the whereabouts of children wrongfully removed" to a country (specified in article 7a of the Convention). In July 1998, State delivered a diplomatic note to the Swedish Foreign Ministry expressing U.S. concerns with Sweden's actions regarding this case.

In a second case, the left-behind parent was initially awarded the return of his child by Sweden's lower courts in 1995. After losing several appeals in lower courts, the abducting parent won an appeal with Sweden's Supreme Administrative Court in May 1996. The Supreme Court overturned the lower court rulings and denied the return of the child because the child's habitual residence had over time become Sweden.⁴ This decision was made despite a mutually agreed-upon U.S. custody order stipulating that the child's habitual residence was to remain the United States and that jurisdiction over issues of custody was to remain with the U.S. court. In response to the Swedish Supreme Court's decision, State delivered a diplomatic note in June 1996 to Sweden regarding Sweden's failure to abide by its obligations under the Convention. As of July 2000, the child remains in Sweden. Although Swedish courts granted the left-behind parent limited visitation rights, it is not yet clear whether the left-behind parent will be able to exercise those rights.

²*Report on Compliance With the Hague Convention on the Civil Aspects of International Child Abduction.*

³This case was cited earlier on page 33 as having a lengthy duration of 1,329 days.

⁴This case was cited earlier on page 33 as lasting 490 days.

U.S. Parental Child Abduction Cases Involving Austria



From January 1995 through May 15, 2000,

Nine return cases were opened

- six cases have been closed
- two children returned and four not returned
- three cases remain open

Two visitation cases were opened

- both remain open

Source: GAO analysis of State Department case files.

**Briefing Section III
U.S. Parental Child Abduction Cases
Involving Austria**

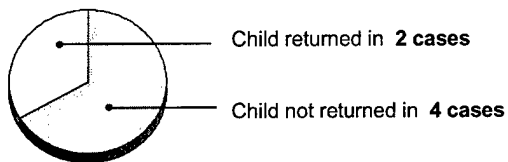
Six of the nine cases seeking the return of a child from Austria have been closed. The child was returned in two cases; not returned in four cases; and three cases remain open.

The two cases in which the left-behind parent sought visitation both remain open. In one of these cases, the left-behind parent lost an original request to have the child returned and then applied for visitation rights.

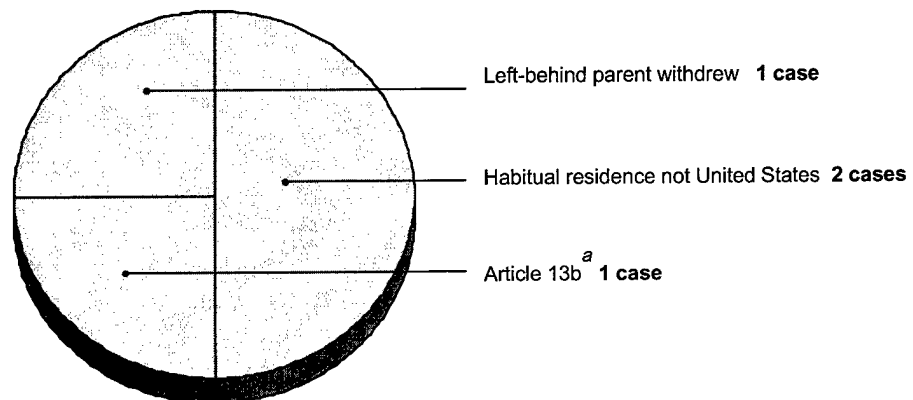
Briefing Section III
U.S. Parental Child Abduction Cases
Involving Austria



Outcome in six closed cases



Reasons four children not returned



^aArticle 13b allows a Hague Convention party state to refuse to return the child if return would expose the child to a grave risk of physical or psychological harm.

Source: GAO analysis of State Department case files.

**Briefing Section III
U.S. Parental Child Abduction Cases
Involving Austria**

Of the nine return cases involving Austria, six have been closed, of which only two resulted in the return of the child. Of the remaining four cases, three denials of return were based on Austrian judicial decisions. In two of these cases, the Austrian courts ruled that the child's habitual residence was not the United States. In the third case, the abducting parent effectively resisted an attempt by Austrian authorities to enforce the return order. The Austrian appeals court allowed an appeal by the mother to the Supreme Court, which decided to reopen the Hague case. In April 1997, the Austrian Court approved the mother's petition not to enforce the order for return under article 13b of the Hague Convention. It found that the child had over time become settled in Austria and would be harmed by being uprooted. In the remaining case, the left-behind parent withdrew the application. No reason was listed in the files as to why the application was withdrawn.

The median duration of the six closed cases was 176 days. However, one case lasted 819 days, and a second case lasted 571 days.



Reasons three return cases remain open

- Left-behind parent appealing court decision in one case
- Left-behind parent providing additional information in two cases

Reasons two visitation cases remain open

- Left-behind parent negotiating expanded terms of visitation rights
- Left-behind parent appealing court decision

Source: GAO analysis of State Department case files.

**Briefing Section III
U.S. Parental Child Abduction Cases
Involving Austria**

One of the three return cases that remain open is being appealed by the left-behind parent. The Austrian court of first instance denied the return of the child ruling that the left-behind parent did not have custody. In the two remaining cases, filed by the same left-behind parent for the return of two children, the Austrian central authority has requested information on whether the children are habitual residents of the United States.

One of the two visitation cases that remain open is a second action in which the left-behind parent lost an initial request for return. In this case, the left-behind parent was granted visitation rights but is still attempting to broaden the terms of visitation rights to include visits to the United States. In the second case, the left-behind parent is appealing the visitation terms granted by an Austrian court.

Briefing Section III
U.S. Parental Child Abduction Cases
Involving Austria



- State Department delivers diplomatic note protesting case handling (November 1998)
 - State officials meet with central authority (March 1999)
 - State Department cites Austria for pattern noncompliance (May 1999)
-

Briefing Section III
U.S. Parental Child Abduction Cases
Involving Austria

Despite the relatively small number of cases involving Austria, the State Department has expressed concern regarding Austria's implementation of the Convention. In a November 1998 diplomatic note to Austria, State raised its concern over the judiciary's lack of understanding of the Convention, especially its slowness in handling cases filed under the Convention. In March 1999, State officials met with the Austrian central authority to discuss overall compliance with the Convention.

Subsequently, State noted in a May 1999 report to Congress that Austria had demonstrated a pattern of noncompliance with its obligations under the Convention.¹ State based its finding primarily on a case in which the Austrian court ordered the return of a child to the left-behind parent but did not enforce the order. The abducting parent absconded with the child, and their whereabouts were unknown for more than 18 months. Upon resurfacing, the abducting parent appealed any further enforcement of the existing return order and won. The Austrian court ruled the child had "resettled into her new environment" in Austria during the period when the abducting parent was evading the final return order. State officials have discussed this case with the Austrian central authority, but the child remains in Austria.

¹*Report on Compliance With the Hague Convention on the Civil Aspects of International Child Abductions.*

The Hague Convention and the Processing of Hague Cases

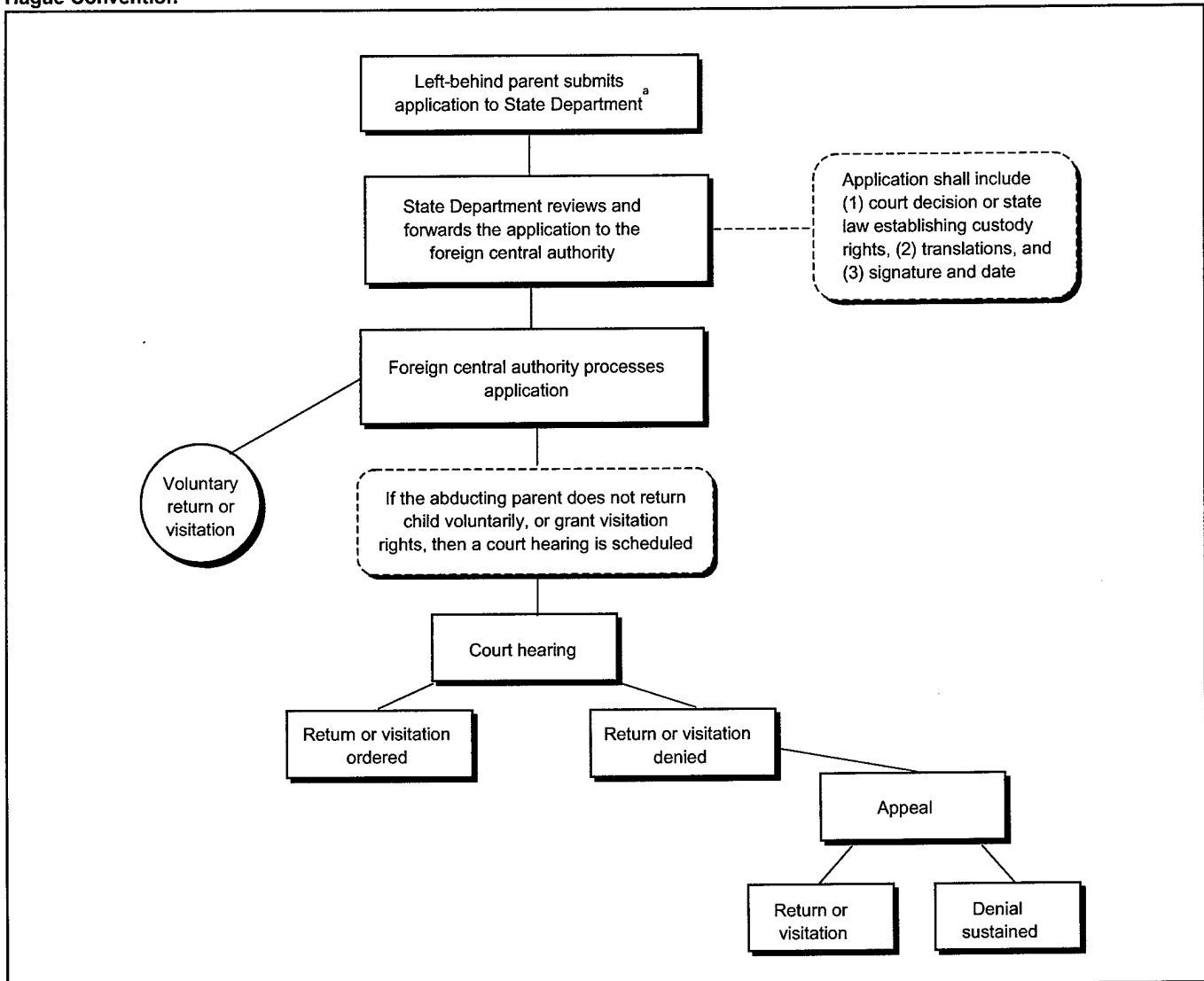
The goal of the *1980 Hague Convention on the Civil Aspects of International Child Abduction* is to protect children from the harmful effects of wrongful removal or retention. The Convention establishes procedures to (1) promptly return a child wrongfully removed to, or retained in, a party country to the country in which the child was habitually resident prior to the abduction or retention and (2) ensure that custody and visitation rights established under the law of one party country are respected in the other party countries. As provided for under article 3 of the Convention, the removal or retention of a child is considered wrongful when it is in breach of custody rights actually being exercised by a left-behind parent when the removal or retention took place. Sixty countries are party to the treaty, including the United States, Germany, Sweden, and Austria.

Filing and Processing an Application

Under the Convention, a left-behind parent who believes his or her child was wrongfully removed or retained in a foreign country can apply to have the child returned and/or to have visitation rights to the child. Filing an application under the Hague Convention is a private civil legal action, and the left-behind parent is a party to the legal and administrative processes in the foreign country. The party country governments are expected to facilitate case processing in a manner that is consistent with the Convention. As illustrated in figure 1, when an abducting parent refuses voluntarily to return a child to, or grant visitation to, a child by the left-behind parent, the case may be resolved through judicial review or other actions.

Appendix I
The Hague Convention and the Processing of
Hague Cases

Figure 1: Process for Filing and Adjudicating an Application for Return or Visitation of a Parentally Abducted Child Under the Hague Convention



^aA left-behind parent can file for the return of or access to a child through the State Department or directly with either the foreign government's central authority or courts.

Source: State Department.

How Cases Are Resolved

There is a Convention obligation to return an abducted or wrongfully retained child below the age of 16 if the application is made within 1 year from the date of the wrongful removal or retention. However, this obligation does not exist under the following circumstances:

- The Convention does not apply to any child that was not "habitually resident in a contracting [country] immediately before any breach of custody or visitation rights." This provision, under article 4 of the Convention, does not define "habitual residence." Most U.S. courts, and the courts of some foreign jurisdictions, define habitual residence as the place where a child has been physically present for an amount of time sufficient for acclimatization and that has a degree of settled purpose from the child's perspective.¹ The child's parents need not intend to reside permanently in a country for it to be considered the child's habitual residence.²
- The Convention does not require the return of the child when the left-behind parent seeking the child's return "was not actually exercising custody rights at the time of the removal, or had consented to or subsequently acquiesced in the removal or retention" (article 3b and article 13a of the Convention).
- The Convention does not require return or visitation of the child if the country's legal authority rules that "there is a grave risk that [the child's] return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation" (article 13b of the Convention).
- The Convention permits but does not require return where return proceedings are commenced after 1 year has passed since the child's abduction (article 12 of the Convention) and the child has become settled in its new environment.

¹ See, for example, *Feder v. Feder*, 63 F.3d 217 (3d Cir. 1995) citing *In re Bates*, No. CA 122-89, High Court of Justice, Family Div'l Ct. Royal Courts of Justice, United Kingdom (1989); *Friedrich v. Friedrich*, 983 F. 2d 1396 (6th Cir. 1993).

² Elisa Perez-Vera, "Report of the Special Commission," Conference de La Haye de droit international prive: Actes et documents de la Quatorzieme session, Vol. III, Child Abduction, ¶ 66. According to the State Department, this report by the Hague Conference Reporter for the Convention is "recognized as the official history and commentary on the Convention and is a source of background on the meaning of the provisions of the Convention." U.S. Department of State, Legal Analysis, Hague International Child Abduction Convention, 51 *Fed. Reg.* 10494, 10503.

Appendix I
The Hague Convention and the Processing of
Hague Cases

Cases may also be concluded by (1) the left-behind and abducting parent reaching an agreement with or without judicial mediation or (2) a left-behind parent withdrawing the application.

Comments From the Department of State



United States Department of State

Chief Financial Officer

Washington, D.C. 20520-7427

August 29, 2000

Dear Mr. Hinton:

We appreciate the opportunity to review your draft report, "FOREIGN AFFAIRS: Status of U.S. Parental Child Abductions to Germany, Sweden, and Austria," GAO/NSIAD-00-226BR, GAO Job Code 711517.

The Department directly provided technical comments to your staff that we understand, for the most part, were incorporated in the report text. Our enclosed response, which is provided for incorporation with this letter as an appendix to the final report, is based on the text of the original draft report and subsequent related discussions.

If you have any questions concerning this response, please contact Ms. Mary B. Marshall, Director, Office of Children's Issues, Office of Citizens Services, Bureau of Consular Affairs, at (202) 663-2613.

Sincerely,

A handwritten signature in dark ink that reads "Bert Edwards".

Bert T. Edwards

Enclosure:

As stated.

cc:

GAO/NSIAD – Mr. Brummet
State/CA/OCS/OCI – Ms. Marshall

Mr. Henry L. Hinton, Jr.,
Assistant Comptroller General,
National Security and International Affairs,
U.S. General Accounting Office.

Appendix II
Comments From the Department of State

*Department of State Comments on the GAO Draft Report,
FOREIGN AFFAIRS: Status of U.S. Parental Child Abductions to
Germany, Sweden and Austria, "GAO/NSIAD-00-226BR, GAO Job Code 711517*

General Comments

A Department of State top priority is the safety and security of U.S. citizens abroad, particularly those children victimized by international parental child abduction (IPCA). In 1994, the Bureau of Consular Affairs in the Department of State created the Office of Children's Issues (OCI) as the focal point of federal efforts on IPCA and international adoption issues.

Over the past year, OCI has increased its staff of 11 to 26. This increased staff has improved our ability to help these children and provide better service to parents. OCI now has a position responsible for coordination with the National Center for Missing and Exploited Children, a Presidential Management position coordinating OCI outreach and customer service initiatives, and a Management Analyst position to assist in improving OCI services.

In order to improve Department services on the issue of IPCA, the Bureau of Consular Affairs transferred the Children's Passport Issuance Alert Program from Passport Services to OCI in April 2000. This further consolidation of child abduction related functions means that now parents fearing international abduction of their children have to deal with only one Department office. Since May 1, 2000, 905 new cases of children have been included in this more focused program.

OCI continues to enhance its outreach efforts to inform and educate the growing number of parents, attorneys, judges, law enforcement, non-profits and others involved in international parental child abductions. OCI officers regularly meet with left-behind parents to provide direct personal assistance in bringing these children home. In November 1999, the Department established OCI points of contact at every Embassy and Consulate in the world. OCI routinely communicates with these contacts to convey the latest on policy and procedures and encourages these contacts to share "best practices."

Over the past fiscal year, OCI has participated in the following Outreach events: 10 Congressional, 25 Foreign, 63 Intergovernmental, 5 Media, 16 Left-behind Parent Meetings, and 23 speakers to legal conferences, professional seminars, and outside federal government events for a total of 142 events. Additionally, the Director of Children's Issues has also recently participated in a radio interview to discuss abduction issues with an attorney, Congressman and the parents involved in some high profile cases. With regard to continuing public education, OCI maintains a calendar, with input from all members of the interagency working group on IPCA to track all training and outreach on these issues.

Furthermore, the Department is hosting a judicial conference on International Child Custody in September 2000. Delegates from six common law countries and observers

Appendix II
Comments From the Department of State

from many other countries will attend. One of the goals of the conference is to enhance consistency in interpretation and implementation of the Hague Abduction Convention.

The issue of international parental child abduction is receiving attention from the highest levels in the Administration. In May 2000, President Clinton, during a meeting in Germany with Chancellor Schroeder, emphasized national concern about U.S. children abducted to Germany. This meeting resulted in the establishment of a U.S. - German Working Group to address the respective concerns of both party states. Assistant Secretary Mary A. Ryan served as head of a U.S. delegation that traveled to Berlin in June 2000 to meet with officials from the Chancellery, the Foreign Office and the Ministry of Justice. Ambassador Ryan's aim was to establish a process between the U.S. and Germany to review existing child abduction cases and systemic problems. The working group met in Washington, DC in July 2000 and discussed chief concerns that deter the return of a child or the granting of visitation rights in both countries. A number of Hague and case-specific issues were also discussed in addition to child custody legal practices in the respective countries. A third meeting is scheduled for late September in Berlin. German officials have already implemented streamlined procedures for processing Hague cases in Germany.

The Department of State also actively participates in the inter-agency senior policy group established by the Secretary of State and the Attorney General to coordinate the federal response to international parental child abduction. The policy group has created the federal action plan on international parental child abduction. OCI also chairs the international parental child abduction interagency working group created by the policy group to oversee implementation of this action plan. The Senior Policy group meets quarterly to update the action plan, and the working group meets monthly to review action plan implementation strategies.

OCI, in coordination with the working group, is also developing a comprehensive interagency case tracking management system. This system will serve as a central point for all federal agencies and designated non-profit representatives that deal with international child abductions. The database will provide comprehensive statistics on all abduction cases and will allow federal agencies to provide more useful and timely information to parents. The prototype will be in re-testing phase beginning - October 2000.

Report Specific Response

The Department of State's primary concern in cases of international parental child abduction is the welfare and protection of the child and assistance to the parent left behind. The Office of Children's Issues does not require that parents seeking our help establish that an abduction, or a wrongful retention, occurred for the Department to provide the full range of Consular services. As the U.S. Central Authority for the Convention, OCI's role is fundamentally facilitative and informational. This office provides parents with information and provides assistance as they pursue return of their children. OCI may open a "case" based on nothing more than the fact that a parent is concerned about his/ her American child abroad. In a significant number of cases where a parent files for return of his/ her child, a court may find that the applicant did not establish that an abduction, or retention, pursuant to the Hague Convention occurred. The child may not have been habitually resident in the United States, or the applicant parent did not have a "right of custody" under the Convention. While it is important to monitor and track these case outcomes, it is misleading for GAO to include them under "child not returned". The phrase "child not returned" implies that the child was abducted under the Convention when that may not have been the case. Case outcomes that indicate that an abduction was not established under the Convention should be considered in a separate category.

It is important to note that this GAO study only included applications for assistance pursuant to the Hague Abduction Convention filed for return of, or access to, children in Germany, Austria and Sweden. The GAO did not look at applications from these countries for return of, or access to, children in the United States. The report's ability to surface problems with these countries' implementation of the Convention is therefore limited, as is the report's usefulness as we seek to improve implementation.

In order to be as helpful as possible to parents seeking return of their children, OCI will often forward to other Central Authorities incomplete applications lacking critical supporting documents such as evidence establishing that the parent had a "right of custody" under the Convention. OCI informs parents that while other Central Authorities are often unable to process the case without complete documentation, they may be able to make limited preliminary inquiries while parents are gathering the required documents. In its study, GAO began counting a case as open, and measuring the duration of the case, when OCI sent the first documents to the other Central Authority, not when the applicant had provided all of the necessary documents in the case. Therefore, GAO's information on duration of cases is not a measurement of other countries' case processing.

In OCI's facilitative role as Central Authority we have only limited information on Hague cases between the U.S. and other party countries. As the GAO correctly points out, applicants may file under the Convention without ever contacting either Central Authority. Even when applicants inform Central Authorities of a case and OCI opens a file we may only have the documents that the applicant provides. Given OCI's role, we often have limited information available and usually only from the applicant parent. Furthermore, OCI's files do not indicate what may have occurred after the cases were

Appendix II
Comments From the Department of State

closed. In some instances, parents may agree outside of court proceedings that a child may be returned or visitation may be granted without our knowledge. Our case files only include information that we are made aware of. Therefore, without further investigation into these cases OCI may not learn of the ultimate outcomes.

GAO Contact and Staff Acknowledgments

GAO Contact

John Brummet (202) 512-5260

Acknowledgments

In addition to the person named above, Mark B. Dowling, Ryan P. Hartman, Kathleen M. Joyce, Edward D. Kennedy, Janice Villar Morrison, and Michael C. Zola made key contributions to this report.

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